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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,971	01/08/2004	David A. Miceli	N1040-ICW	6447
23456	7590	05/27/2005		
WADDEY & PATTERSON			EXAMINER	
414 UNION STREET, SUITE 2020			NGO, LIEN M	
BANK OF AMERICA PLAZA				
NASHVILLE, TN 37219			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/753,971	MICELI ET AL.
	Examiner	Art Unit
	LIEN TM NGO	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 08 January 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-25 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-25 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1, 2 and 3.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Claim Objections***

1. Claim 24 is objected to because of the following informalities: in line 5 of claim 24, "said containing" should be – said container --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-15,17 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson, Jr. et al. (5,092,477). Johnson discloses, in figs. 1 and 13, a closure comprising an inner cap 16 and an outer cap 20 each having a row of angular abutments 48, 90, the outer cap having two tabs 82, 84, and the inner cap having a groove 38 and at least one channel 55, the tabs shaped to hold the outer cap in nesting relation when the tabs are fitted in the groove, and the channel being shaped to allow one of the tabs to pass through the channel when one of the tabs and the channel are aligned. The groove has an upper surface substantially perpendicular to the outside surface of the circumferential sidewall and a lower surface 52 tapered for the outside surface of the circumferential sidewall. The inner cap comprises indicating words 18 on the top surface.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 24 is rejected under 35 U.S.C. 102(e) as being anticipated by Robinson (6,508,373). Robinson discloses, in figs. 2 and 8, a container comprising having a flange 36 including a tab 44, a cap having a notch 62 at the distal free end, and the tab will snap into the notch and prevent any further rotational movement in a closing direction.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, Jr. et al..

Johnson does not disclose at least three tabs. It would have been an obvious matter of design choice to make the invention of Johnson to have at least three tabs, since applicant has not disclosed that at least three tabs solve any stated problem or is for any particular purpose and it appears that the invention would perform equally well with at least two tabs.

7. Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, Jr. et al. in view of Robinson.

Johnson does not disclose the container comprising having a flange 36 including a tab 44, the cap having a notch 62 at the distal free end, and the tab will snap into the notch.

Robinson teaches a container comprising having a flange 36 including a tab 44, a cap having a notch 62 at the distal free end, and the tab will snap into the notch. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Johnson invention with the container comprising having a flange including a tab and the inner cap 16 having a notch at the distal free end, as taught by Robinson, in order to enhance the child resistant feature of the closure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

May 26, 2005

